

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

JANUARY TERM, 1921.

No. 3473.

705

INDEPENDENT COUNCIL, No. 2, JR. ORDER OF UNITED
AMERICAN MECHANICS OF THE DISTRICT OF COLUM-
BIA, A CORPORATION, APPELLANT,

vs.

ERNEST E. LUCAS, MINTA A. KING, EMMA A. FISHER,
AND SUSIE A. STEELE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED NOVEMBER 9, 1920.

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Court of Appeals of the District of Columbia.

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Court of Appeals of the District of Columbia.

No. 3473.

INDEPENDENT COUNCIL No. 2, JR. ORDER OF UNITED AMERICAN
Mechanics of the District of Columbia, a Corporation, Ap-
pellant,

vs.

ERNEST E. LUCAS et al.

a Supreme Court of the District of Columbia.

At Law. No. 61075.

ERNEST E. LUCAS, MINTA A. KING, EMMA A. FISHER, and SUSIE
A. STEELE, Plaintiffs,

vs.

INDEPENDENT COUNCIL No. 2, JR. ORDER OF UNITED AMERICAN
Mechanics of the District of Columbia, a Corporation, De-
fendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1 *Bill of Particulars in the Municipal Court.*

Filed February 20, 1918.

In the Supreme Court of the District of Columbia.

At Law. No. 61075.

ERNEST E. LUCAS, MINTA A. KING, EMMA A. FISHER, and SUSIE
A. STEELE, Plaintiffs,

vs.

INDEPENDENT COUNCIL No. 2, JR. ORDER OF UNITED AMERICAN
Mechanics of the District of Columbia, a Corporation, De-
fendant.

To death benefits due on account of the death of John W. Lucas,
\$500.00.

Affidavit of Merit in the Municipal Court.

* * * * *

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, the undersigned, a Notary Public in and for the District aforesaid, Ernest E. Lucas, who being first duly sworn, upon his oath deposes and says: that he is one of the persons named as plaintiffs in the above entitled suit, wherein the Independent Council No. 2, Jr. Order of United American Mechanics, of the District of Columbia, a corporation organized and existing under and by virtue of the laws of the District of Columbia, is named as defendant; that said plaintiffs have a just cause of action against the said defendant; that said cause of action is as follows:

That heretofore, to-wit, on the 6th day of August, 1916, and for a long time prior thereto, one John W. Lucas was a member in good standing of Independent Council No. 2, Jr. Order of United American Mechanics, of the District of Columbia, a fraternal, benevolent association and defendant in this suit; that Article V, sections 1, 2 and 3, of the by-laws of said order provide as follows:

"Sec. 1. This Council is connected with two Funeral Benefit Associations of the Jr. O. U. A. M. and pays Five Hundred Dollars to the beneficiaries of such of its members as have been enrolled in both associations for a period of 271 days or over; provided that they are not 13 weeks in arrears for dues at the time of death."

"If membership has been less than 271 days such sums will be paid as may be fixed by the laws of the Funeral Benefit Associations."

"Sec. 2. The assessments of the Funeral Benefit Associations shall be paid out of the funds of the Council not otherwise appropriated."

"Sec. 3. Upon satisfactory evidence of the death of a brother of this Council who is in good standing, the Council may appropriate such sum as may be needful to insure a decent burial and pay for all necessary certificates in proof of death. The said sum to be deducted from the amount the beneficiaries were entitled to receive at the death of the member, and the balance of the benefits must be paid to the person designated by the brother or to his heirs or assigns."

that while the said John W. Lucas was a member in good standing in said defendant order, having been a member for over Fifteen Years, and having been enrolled in both of said associations for a period of more than 271 days, and having paid all dues and assessments levied against him, to-wit, on the 6th day of August, 1916, he departed this life in the City of Washington, District of Columbia, intestate; whereupon the defendant was promptly given and had due and effectual notice and proof of death of said John W. Lucas, and this affiant avers that there thereupon became and was due to the heirs or assigns of the said John W. Lucas, deceased, from the defendant the sum of \$500; that the persons named as plaintiffs,

herein, namely, Ernest E. Lucas, this affiant; Minta A. King, Emma A. Fisher, and Susie A. Steele, are the only heirs at law and next of kin of the said John W. Lucas, deceased; that the said defendant, although often requested so to do, did not pay and has not
 3 paid the amount of said benefits, and there is justly due and owing to the plaintiffs from the defendant the sum of \$500.00, exclusive of all set-offs and just grounds of defense.

ERNEST E. LUCAS.

Subscribed and sworn to before me this 22nd of August 1917.

[SEAL.]

CHAS. H. BAUMAN,
 Notary Public, D. of C.

Affidavit of Defense in the Municipal Court.

* * * * *

DISTRICT OF COLUMBIA, ss:

John B. Tiffey, being first duly sworn, deposes and says that he is the Recording Secretary of the Independent Council No. 2, Junior Order of United American Mechanics, a corporation under the laws of the District of Columbia, and the defendant in the above entitled cause, and is familiar with the rules and regulations governing said organization; that he denies that the plaintiffs have a cause of action against the defendant corporation for that the plaintiffs' intestate, John W. Lucas, through whom they claim certain death benefits, was not, at the time of his death, in good standing in the defendant organization, and, by reason thereof, the plaintiffs are not entitled to collect the funeral benefits claimed in their affidavit of merit.

Affiant is informed and therefore avers that the plaintiffs' intestate, John W. Lucas, died on the 6th day of August, 1915;
 4 that on the day prior to his death, his brother, the plaintiff, Ernest E. Lucas, made inquiry of the Financial Secretary as to his brother's dues in said organization, and was thereupon informed that his dues were in arrears; that although so advised, neither the said John W. Lucas, in his lifetime, nor any other person for him, or in his behalf, paid said dues, prior to the death of said John W. Lucas; and that by reason thereof, the plaintiffs' intestate, at the time of his death, was not in good standing in said organization, and by reason thereof the defendant is not liable for funeral benefits as claimed by the plaintiffs in this case.

Affiant further avers that Section 4, of Article V of the By-Laws of the defendant organization provides

"The dues of each member of this Council shall be two dollars and fifty cents (\$2.50) per quarter, consisting of thirteen weeks, and shall be paid weekly, monthly or quarterly."

And Section 6, of the same article of said By Laws provides:

"It shall be the duty of each member to pay his dues, levies or fines on or before the expiration of each quarter viz: March 31, June 30, September 30, December 31, of each year."

Affiant further avers that by Section 8 of Article VI of said By-Laws it is provided:

"A brother who owes the Council thirteen weeks' dues or over shall not be entitled to receive sick benefits for a period of eight weeks after such back dues are paid."

Affiant avers that even had the said John W. Lucas paid his dues after June 30th, 1916, after becoming in arrears, he would not under the By-Laws of the defendant organization have been entitled to sick benefits until the expiration of a period of grace of eight weeks

5 Affiant further avers that the members of the defendant organization are insured for funeral benefits in two different funeral benefit organizations, known as the Funeral Benefit Association of the United States, and American Funeral Benefit Association of the United States of North America; that members of the defendant organization are entitled to funeral benefits as may be allowed by said organizations; that by Section 3 of Article IX of the laws of the Funeral Benefit Association of the United States it is provided:

"A deceased member of an Organization holding membership in this Association, shall be held and considered to have been in good standing in such Organization at the time of his death if * * * (d) he was not, at the date of the beginning of the sickness, or at the time of the occurrence of the accident which caused his death, in arrears for dues in his said Organization; (e) he was not at the date of his death, serving a probationary period or penalty which did deprive or would have deprived him of the payment of sick benefits."

Affiant avers that as the plaintiffs' intestate was in arrears for dues prior to the date of the beginning of his last illness, he was not in good standing as defined by the above mentioned section of the laws of the Funeral Benefit Association, and by reason thereof the defendant organization cannot collect from said Association any funeral benefits for the plaintiffs by reason of the death of said John W. Lucas, and the plaintiffs cannot collect from the defendant organization any funeral benefits.

Affiant further avers that by Article XIII of the American Funeral Benefit Association of the United States of North America, Section 2, it is provided:

"Upon the death of a member of an Organization in good standing in this Association which member was at the time of his death in good standing, this Association will reimburse the said Organization in accordance with the following graded scale based on the true age of the member at the time of enrollment on the books of the Association."

* * * * *

6 "No organization shall be entitled to receive benefits from this Association if the deceased at the time of his or her death was in arrears to his or her organization."

Affiant avers that by reason of the failure on the part of the decedent, John W. Lucas, to pay his dues, as prescribed, he became in arrears for said dues, and therefore not in good standing in his organization; that by reason thereof the defendant organization is unable to collect for the benefit of the plaintiffs by reason of the death of the plaintiffs' intestate any funeral benefits.

Wherefore, this affiant, as Recording Secretary of the defendant corporation, avers there is no liability on the part of the defendant to the plaintiffs.

JOHN B. TIFFEY,
*Recording Secretary of the
 Independent Council No. 2,
 Junior Order of United
 American Mechanics.*

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 5th day of September, 1917.

[SEAL.]

MAUDE A. FREEMAN,
Notary Public, D. C.

Supreme Court of the District of Columbia.

Tuesday, February 25th, 1919.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice presiding.

* * * * *

Before the Chief Justice.

Come now the parties hereto by their respective attorneys of record and a jury of good and lawful men of this District, to wit: Wm. C. Miller, Wilbur C. Van Horn, Thornton L. Anderson, Edwin Brinkman, John W. Blakelock, Joseph E. Shelton, Lindsley C. Morrison, Henry H. McKee, Henry E. Eselhorst, John G. Rabbitt, Fred'k G. Reisinger and John F. Roche, who are duly sworn to well and truly try the matters of difference herein between plaintiff and defendant and after this cause is given to the jury in charge, they upon their oath say they find in favor of the plaintiffs for the sum of Five Hundred Dollars. Thereupon, defendant by its said attorney waives the time within which to file a motion for a new trial and judgment on verdict is ordered. Wherefore, it is considered that the plaintiff recover herein of the defendant the sum of Five Hundred Dollars (\$500.00), with interest from this date together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment the defendant by its said attorney, in open court, notes an appeal to the Court of Appeals; whereupon, the penalty of a bond to operate as a supersedeas, is hereby fixed in the sum of One Thousand Dollars.

Memoranda.

March 18, 1919.—Supersedeas Bond \$1,000.00 approved and filed.
 April 9, 1919.—Bill of Exceptions submitted.

8 Supreme Court of the District of Columbia.

Tuesday, October 26th, 1920.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice, presiding.

* * * * *

The Court this day having signed the bill of exceptions taken at the trial of this cause, and heretofore submitted to the Court, now hereby orders the same of record, nunc pro tunc.

Assignment of Errors.

Filed October 29, 1920.

* * * * *

Now comes the defendant (appellant) and says that in its judgment the court erred herein as follows:

1. In instructing the jury to render a verdict for the plaintiffs.
2. In overruling defendant's motion to instruct the jury to return a verdict for the defendant.
3. In refusing to rule that:

The evidence showed that plaintiff's decedent, John W. Lucas, was not in good standing in the defendant Council at the time of his death and, for that reason, under the defendant's by-laws and the by-laws of the Funeral Benefit Association, plaintiffs cannot recover in this action.

4. In refusing to rule that:

Under the by-laws of the defendant Council, the dues are \$2.50 per quarter, consisting of 13 weeks, and the evidence shows that, at the time of the death of John W. Lucas, he was indebted for a sum in excess of one quarter's dues. He was therefore not a beneficial member in the Council entitled to receive sick benefits for a period of eight weeks after all such dues were paid, and the check of E. E. Lucas, dated August 5, 1916, for \$4.30, which was sent in payment of the dues of John W. Lucas, amounted to an acknowledgment of the correctness of such indebtedness, whereby the said John
 9 W. Lucas was not beneficial until eight weeks after such payment, and, inasmuch as John W. Lucas died within said eight weeks, to wit, on or about August 6, 1916, he was not a beneficial member of defendant Council and the plaintiffs cannot recover.

5. In refusing to rule that:

The evidence shows that the defendant Council was connected with the Funeral Benefit Association of the United States and that that was one of the two funeral benefit associations referred to in Section 1, Article 5 of the By-Laws of said Council and that the decedent Lucas was enrolled on the books of said Association as a member of the defendant Council, and that the By-Laws of said Association provide a standard of qualification of what is 'good standing' in order to recover funeral benefits in the event of the member's death, to wit, that said member was not at the date of his death serving a probationary period or penalty, which did deprive or would have deprived him of such benefits by the Council, and that the evidence shows that the said deceased member was serving but had not completed the period of eight weeks probationary period, as required by the laws of the Council. Wherefore the said Lucas was not in good standing in his Council to receive benefits and the plaintiffs cannot recover.

6. In refusing to rule that:

Before the plaintiffs can recover, it is mandatory upon them to show that the deceased John W. Lucas complied with the By-Laws of his Council, as it forms the basis of a contract of membership, and, inasmuch as Section 3 of Article IX of the By-Laws of the defendant Council provides that

"a member of this Council who is three months or over in arrears in dues forfeits all his rights and privileges except that he can be admitted into the Council during its sessions. It shall be the duty of the Councillor to see that this Section is strictly enforced,"

and as the evidence shows that the said John W. Lucas was in arrears for dues at the time of his decease, the deceased member was bound by the above By-Laws and the plaintiffs cannot recover.

7. In refusing to rule that:

Section 4 of Article X of the By-Laws of the defendant Council provides:

"Any brother who is three months or over in arrears for weekly dues and shall become sick or disabled, shall not be entitled to receive any of said benefits during such sickness or disability, nor shall he in case of death be entitled to funeral benefits, except as prescribed by the laws of the funeral benefit associations at the time of his death."

The evidence shows that the laws of the Funeral Benefit Association, with which said Council was connected and upon whose
10 books the deceased member was enrolled, provided a standard or qualification of good standing in the Council and that the said John W. Lucas had not complied with that standard and with the law referred to; wherefore the plaintiffs cannot recover.

8. In refusing to rule that:

Section 2, Article VIII, "Penalties" of the By-Laws of the defendant Council provides:

"A brother who is over 13 weeks in arrears for dues shall in case of death receive only such benefits as may be allowed by the Funeral Benefit Associations at the time of his death. He shall not be entitled to any sick benefits for a period of eight weeks after paying such arrears."

And the laws of the Funeral Benefit Association, with which the defendant Council is connected, forbid the payment of funeral benefits, unless the member of the Council was in good standing and such member was enrolled upon its books, and the evidence shows that at the time of the death of John W. Lucas he had not paid the quarterly dues, as provided for in the By-Laws, and that the check that was sent for the same had not been accepted by the Council, and that the said deceased member dies while owing more than one quarter's dues. Wherefore he was in arrears for 13 weeks' dues and under the laws of the Funeral Benefit Association of the United States, with which the Council was connected, the said Council was not entitled to recover the benefits from the said Association and the said John W. Lucas was not entitled to receive the benefits payable under the laws of said Council and the plaintiffs in this case cannot recover.

9. In refusing to rule that:

The evidence shows that it had been the custom of the defendant Council not to pay funeral benefits by reason of death of its members, unless such members were entitled at the time of their death to receive sick benefits and that that custom had been ratified and approved by the said John W. Lucas as a member of the said Council and by the Council itself and that this practice had been long continued, open and notorious and invariably followed, and such practice amounted to the legal standard of a custom and may be considered as having been written in the By-Laws of the Council and the said John W. Lucas was bound thereby and the plaintiffs herein cannot recover.

10. In refusing to rule that:

The By-Laws of the defendant Council must be read in connection with the By-Laws of the Funeral Benefit Association of the United States, with which the said Council was connected and the standard fixed by those two By-Laws provided that a member could not receive funeral benefits, if he was serving a probationary period at the time of his death. Wherefore, the plaintiffs in this case cannot recover.

11. In refusing to rule that:

The construction which the members themselves have placed in good faith upon their By-Laws must be accepted by the court as the real and true construction and meaning, unless that construction is harsh, unreasonable and unfair. The reasonable construction of those By-Laws which relate to arrears of dues was understood and accepted by the members to be, that, when a member owed or was indebted for thirteen weeks' dues to his Council, calculated from the beginning of indebtedness, he was considered as being in

arrears for such dues and not beneficial until after the expiration of eight weeks after such payment of such dues had been made to the Council and therefore the plaintiffs in this — cannot recover.

GEO. W. DALZELL,
Attorney for Defendant.

Designation of Record.

Filed November 2, 1920.

* * * * *

Now comes the defendant (appellant) and designates the following to constitute the record on its appeal to the Court of Appeals in the above entitled cause:

1. Plaintiffs' bill of particulars, in Municipal Court; plaintiff's affidavit of merit and the affidavit of defense filed in said court.
2. Bill of exceptions.
3. Memorandum of verdict.
4. Judgment.
5. Notation of appeal and filing of bond and approval thereof.
6. Assignments of error.
7. This designation.

GEO. W. DALZELL,
Attorney for Defendant.

Service of copy admitted Nov. 2, 1920.

CHAPIN BROWN,
Att'y for Plaintiff (Appellee).

12 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 11, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 61075 at Law, wherein Ernest E. Lucas et al. are Plaintiffs and Independent Council No. 2 Jr. Order of United American Mechanics of the District of Columbia, a corporation is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of November, 1920.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

In the Supreme Court of the District of Columbia.

Law. No. 61075.

ERNEST E. LUCAS, MINTA A. KING, EMMA A. FISHER, and SUSIE A. STEELE, Plaintiffs,

v.

INDEPENDENT COUNCIL NO. 2, JR. ORDER UNITED AMERICAN MECHANICS, Defendant.

Bill of Exceptions.

Be it remembered that, at the trial of this cause on the 25th day of February, 1919, before the Honorable Walter I. McCoy, Chief Justice of the Supreme Court of the District of Columbia, and a jury regularly impaneled and sworn to try the issues pending between the plaintiffs and the defendant, it was stipulated by and between the parties, through their counsel, that either party might offer in evidence any one or more of the following printed documents:

Constitution and By-Laws Independent Council No. 2, Junior Order United American Mechanics of Washington, D. C.

Articles of Corporation, General Laws, Constitution, By-Laws and Rules of Order of the State Council of the District of Columbia, together with the Constitution, Rules of Order and By-Laws of Subordinate Councils in the D. of C., Junior Order of United American Mechanics.

Laws and Proceedings of the 35th Annual Convention of the Funeral Benefit Association of the United States, held at Lancaster, Pa., June 13, 1916.

By said stipulation, each party reserved the right to object to the same or any part thereof, on the ground of irrelevancy, incompetency or immateriality; each party waived objection on the ground that the same were copies and waived identification and admitted that the said documents are what they purport to be.

Pursuant to the said stipulation, the following portions of the said documents were offered and received in evidence, read to the jury, and referred to in argument during said trial, by both parties:

From the Constitution and By-Laws, Independent Council No. 2, Jr. Order United American Mechanics of Washington, D. C.:

Constitution, Article IX, "Dues, etc."

Section 1. The dues of this Council shall be such sums as shall be prescribed by the By-Laws, which shall in no case be less than ten cents per week, which shall constitute a fund for the relief of sick and infirm members, and such other purposes as the Council may deem judicious, and such further sum as the By-Laws shall prescribe for funeral dues or to sustain their treasury.

Sec. 2. Each Council shall have power by their By-Laws to credit the first money paid by a member to his indebtedness for funerals and other charges and the balance, if any, shall be credited to his dues.

Sec. 3. A member of this Council who is three months or over in arrears for dues, forfeits all his rights and privileges except that of being admitted into the Council during its sessions. It shall be the duty of the Councilor to see that this section is strictly enforced.

Constitution, Article X, "Benefits."

Sec. 2. Every beneficial member of this Order who shall have been a member such period of time as fixed by the By-Laws of his Council not exceeding one year, and is not thirteen weeks in arrears for weekly dues, if taken sick or disabled and is unable to follow his usual or other occupation by means of which he can earn a livelihood, and is found worthy and qualified according to the laws of this Order, shall be entitled to such amounts of sick benefits as shall be fixed by the By-Laws of his Council; provided that every Council must pay at least two dollars per week for thirteen weeks in each year; provided further, that such sickness or disability does not proceed from intemperance or other immoral conduct, or does not result from disease contracted or that may have manifested itself prior to his initiation, and provided further, that a Council may by a By-Law declare a member not entitled to benefits from his first week's sickness or disability.

15 Sec. 4. Any brother who is three months or over in arrears for weekly dues and shall become sick or disabled, shall not be entitled to receive any of said benefits during such sickness or disability, nor shall he in case of death be entitled to funeral benefits, except as prescribed by the laws of the funeral benefit association at the time of his death.

By-Laws, Article V, "Death Benefits and Dues."

Section 1. This Council is connected with two Funeral Benefit Associations of the Jr. O. U. A. M. and pays five hundred dollars to the beneficiaries of such of its members as have been enrolled in both associations for a period of 271 days or over; provided that they are not 13 weeks in arrears for dues at the time of death.

If membership has been less than 271 days such sums will be paid as may be fixed by the laws of the Funeral Benefit Associations.

Sec. 2. The assessments of the Funeral Benefit Associations shall be paid out of the funds of the Council not otherwise appropriated.

Sec. 3. Upon satisfactory evidence of the death of a brother of this Council who is in good standing, the Council may appropriate such sum as may be needful to insure a decent burial and pay for all necessary certificates in proof of death. The said sum to be deducted from the amount the beneficiaries were entitled to receive at the death of the member, and the balance of the benefits must be paid to the person designated by the brother or to his heirs or assigns.

Sec. 4. The dues of each member of this Council shall be two dollars and fifty cents (\$2.50) per quarter, consisting of thirteen weeks, and shall be paid weekly, monthly or quarterly.

Sec. 5. A brother owing any fine or other indebtedness to this Council shall pay the same before receiving a credit on his quarterly dues.

Sec. 6. It shall be the duty of each member to pay his dues, levies or fines on or before the expiration of each quarter, viz.: March 31, June 30, September 30, December 31 of each year.

By-Laws, Article VI, "Benefits."

Sec. 7. A brother who is in good standing and has by card become a member of this Council shall be entitled to receive sick benefits as provided in the foregoing sections of this Article six months after the date of his admission. He is immediately entitled to such amounts of death benefits as may be prescribed at the time by the laws of the Funeral Benefit Associations with which this Council is connected, the same as a new member.

16 Sec. 8. A brother who owes the Council thirteen weeks' dues or over shall not be entitled to receive sick benefits for a period of eight weeks after such back dues are paid.

By-Laws, Articles VIII, "Penalties."

Section 1. Any brother three months or more in arrears for dues shall be debarred from all rights of this Council except admission to the council chamber.

Sec. 2. A brother who is over 13 weeks in arrears for dues shall in case of death receive only such benefits as may be allowed by the Funeral Benefit Associations at the time of his death. He shall not be entitled to any sick benefits for a period of eight weeks after paying such arrears.

Sec. 3. The Financial Secretary shall keep a true statement of all members three months in arrears, and shall send notice by mail (sent to last address furnished him) of the amount of arrears for dues at least two weeks before the suspension of a member; and further, any brother six months in arrears shall be declared suspended in open Council by the Councillor unless otherwise ordered by the Council and shall be entitled to reinstatement upon payment of not more than six months' dues and all other arrearages.

By-Laws, Article XII.

Section 1. These By-Laws shall be strictly adhered to and in nowise disobeyed under penalty of suspension from this Council.

Your committee appointed to revise the By-Laws, after going diligently and carefully over the same, beg to submit the foregoing as a substitute for the original By-Laws of this Council.

September 6, 1895.

R. A. GIBSON,
G. G. DE MOLL,
D. M. WEEKS,
Committee.
WM. E. JONES,
Councilor.

J. W. LUCAS,
[SEAL.] *Rec. Secy.*

Approved by Law Committee.
Attest:

WM. L. BOYDEN,
[SEAL.] *S. C. Secretary.*

Adopted September 22, 1903.

Laws and Proceedings of the 35th Annual Convention of the Funeral Benefit Association of the United States, Held at Lancaster, Pa., June 13th, 1916.

Laws, Article I.

Sec. 2. This Association is formed by the Association together of Councils and similar subordinate bodies of fraternal, patriotic and beneficial associations; which Council and similar subordinate bodies are hereinafter designated as "Organizations," the membership of which Organizations is confined to native born white male Americans, who shall be at the time of their admission to such membership between the ages of 16 and 49 years, both inclusive, which Organizations pay funeral benefits to the beneficiaries or representatives of deceased members thereof; for the purpose of the mutual reimbursement of such Organizations, and of such other organizations, hereafter becoming members of this Association, for losses incurred through the payment of such benefits in the manner in these laws hereinafter provided.

Laws, Article IX.

Section 1. Upon the death of a member of any Organization holding membership in this Association, which member was at the time of his death in good standing in such organization, as hereinafter defined in these laws, the said Association shall pay to such organization such sum of money as it may be entitled to receive under the laws of this Association, if such organization is required to pay such sum to the beneficiaries or representatives of the deceased member; but no payment of any sum shall be made to any organization in cases

where no liability is incurred thereby on account of the death of a member thereof.

Sec. 3. A deceased member of an Organization holding membership in this Association, shall be held and considered to have been in good standing in such Organization at the time of his death if * * * (d) he was not, at the time of the beginning of the sickness, or at the time of the occurrence of the accident which caused his death, in arrears for dues in his said organization; (e) he was not at the date of his death serving a probationary period or penalty which did deprive or would have deprived him of the payment of sick benefits.

And upon the trial of the said cause as aforesaid, the plaintiffs, to maintain the issues on their part, produced as a witness ERNEST E. LUCAS, one of the plaintiffs, who testified on his direct examination that the three plaintiffs in the case, other than himself, were his three sisters; that John W. Lucas, deceased, was his brother, and that the said plaintiffs were the sole heirs at law and next of kin of said John W. Lucas, who was unmarried. That John W. Lucas was a member of Independent Council No. 2, Junior Order United American Mechanics from the time he was 18 years old until his death at the age of 47. That on more than one occasion, witness paid the dues of his said brother in said order to Mr. Weeks, Financial Secretary of said Council, at the meeting place of the Council and at Mr. Weeks' home; when paid at Mr. Weeks' home it would be at 6 or 7 o'clock in the evening, after Mr. Weeks came home from work. That witness' brother was taken sick in his last illness on July 14, 1916, and witness notified Mr. Weeks by postal card. That on Saturday, August 5, 1916, at about 7 p. m., witness called at Mr. Weeks' house to pay his brother's dues, but Weeks was not at home; witness saw Mrs. Weeks and stated that he came for the purpose of paying his brother's dues; he was prepared to pay them; Mrs. Weeks was unable to tell the amount of the indebtedness of witness' brother to the defendant Council and witness told her that he was going back to the store, and requested that, when Mr. Weeks returned, she ask him to call witness by telephone. That witness returned to the store and about 8:30 or 9 o'clock the same evening (Saturday), Mr. Weeks called him by telephone and the following conversation took place:

"I told him the reason I had got his wife to call me; that my brother was ill and I wanted to pay him his dues which I did not know what the amount was and I would like to find out from him. He told me it would be \$4.30 and I told him all right. I would come back down Saturday night and pay them. He said no, it would be all right to send a check and put it in the mail on Saturday night and he would give a receipt dated Saturday night. There was not any question of whether the check would be good when received or be good on the day when the check was dated. It was dated on Saturday August 5, 1916, and the receipt was also dated August 5, 1916, and he said he would drop it in the mail that night, which he did not drop it in the mail——"

Question (by plaintiffs' counsel). "Wait a moment. He told you it would be all right to mail a check?" Answer. "Yes sir; he said it would be all right."

Question. "And that he would receive it as payment as on August 5th?" Answer. "As on August 5th."

That the witness mailed a check to Mr. Weeks within half an hour after this conversation. In the course of said conversation as related by the witness, the following occurred:

19 "I told him that my brother was very ill and did not expect to live. I do not remember at the time whether I asked him whether he had received the other notice I sent him or not. There was some conversation on it, but I do not remember whether he said he received it or not. I asked him about the amount and he said all right, to send the check."

That John W. Lucas died Sunday morning August 6th, at 9 o'clock. On Monday, August 7th, about 7 o'clock p. m., Mr. Weeks, who had learned of the death of John W. Lucas delivered to the witness at the home of the witness' sister a receipt, which was introduced in evidence, marked plaintiffs' exhibit 1, and exhibited to the jury, and is in the words and figures following:

"Independent Council No. 2, Jr. O. U. A. M.

Washington, D. C., Aug. 5, 1916.

Received of Brother J. W. Lucas Four and 30/100 dollars in full dues to date.

D. M. WEEKS,
Fin. Secy."

And thereupon the witness continued his testimony as follows: That on former occasions his brother had been in arrears of dues to the Council and witness had paid them. Thereupon counsel for plaintiff exhibited certain papers to the witness who identified them as receipts and notices which he had seen in possession of his brother and which he had obtained from his brother's effects. The same were introduced in evidence and marked plaintiffs' exhibits 2 to 9 inclusive, and exhibited to the jury. The said receipts show payments made and balance due, as follows:

Date.	Amount.	Period.
1914.		
Oct. 7.	\$.60	Quarter ending June 30, 1914, in full.
	.40	Cr. on a/c Sept. 30.
1916.		
Jan. 24.	2.00	On a/c balance due \$2.90.
Mar. 13.	2.00	On a/c balance due \$4.00.
Apr. 10.	2.00	On a/c for quarter Mar. 31, 1916 and Dec. 31, 1915; balance due \$2.00.
Apr. 23.	2.00	Quarter ending Mar. 31, 1916, in full.

Two of the said notices of indebtedness are addressed to J. W. Lucas and signed by D. M. Weeks, Financial Secretary. Each bears date one month before the commencement of a quarter and shows a balance due at the commencement of the then current quarter, dues for the then current quarter, total amount due, credit of cash paid during the then current quarter, and memoranda of payments made after the expiration of the quarter to which the notice relates on account of the total balance shown to be due. The third of said notices bears date June 1, 1916, and shows "To dues for the quarter June 30, \$3.10." Each of said notices contains this:

"Pursuant to the requirements of the By-Laws, it becomes my duty to inform you that your indebtedness to this Council to date is as follows: * * * A member of this Council who is over three months in arrears for dues, forfeits all rights and privileges, except that of being admitted into the Council Chamber during its session and over six months in arrears is liable to suspension.

Any brother who is over thirteen weeks in arrears shall not be entitled to receive sick benefits for a period of eight weeks after paying such arrearages.

Every member is cautioned to keep their address correct on the books of the Council."

Thereupon the witness continued his testimony as follows: That after his brother's death, he received forms for proof of death from Mr. Tiffey, one of the officers of the defendant Council, which witness had filled out and returned to Mr. Tiffey. That demand for \$500 death benefits was made upon the defendant order and refused and the same has not been paid.

Thereupon the witness was cross-examined by counsel for the defendant and on cross-examination testified as follows: That John W. Lucas was a single man, engaged in the cigar and tobacco business in Washington; that he was secretary of the defendant council for many years, kept its minutes, and, in earlier years, attended its meetings regularly; later, through pressure of business and discontent with the Order he lost interest in it and became in arrears for dues from time to time. That witness sometimes paid arrearages of dues for his brother at his request. That witness helped his brother in his business. That witness inquired about his brother's financial standing in the Council, knowing that he belonged to it, but did not know when he made inquiry that his brother was in arrears.

21 That between July 14, when John W. Lucas was taken sick, and August 5th, witness took no steps to ascertain what, if anything, his brother owed to the Council. That when Weeks called witness by telephone on the evening of August 5th, Weeks stated that John W. Lucas was in arrears of dues; Weeks did not state that, if the amount were paid it would pay John W. Lucas up, but that he would not be entitled to benefits. Witness did not know that Tuesday is the meeting night of the Council and did not inquire when or where it was. The check represented money of John W. Lucas, who had requested witness to look after his business

in general. He did not say anything to witness about paying the dues from July 14 to August 5, 1916, and witness did not know and his brother never told him what the arrears were in the lodge. That John W. Lucas was a charter member of the Council and witness understood, but was not certain, that he kept the minutes of the lodge wherein its by-laws were construed from time to time and acted upon. Witness understood that the Council was connected with an outside Funeral Benefit Reimbursement Association. That a month after John W. Lucas' death, a man representing the Council called and offered to return witness' check and asked for the return of the receipt. Witness declined to surrender the receipt; the check has never been paid.

And thereupon the witness was examined on redirect by counsel for the plaintiffs and gave testimony as follows: that he does not recall whether the attempted return of the check was after he had received the forms of proof of death. That — to the illness of John W. Lucas, witness was helping his brother in his cigar business and, after he was taken sick, witness ran it; the receipts were deposited in bank; for the first week John W. Lucas signed the checks; after that, witness deposited money received from the business in his own name; the check tendered to the Council was drawn on this account; the money against which it was drawn belonged to John W. Lucas.

22 Thereupon witness was examined on recross-examination by counsel for defendant and identified the check with which he undertook to pay his brother's dues on August 5, 1916. The same was introduced in evidence, marked defendant's exhibit No. 1. It is in words and figures following:

“Washington, D. C., Aug. 5, 1916. No. 7-A.

Pay to the order of D. M. Weeks \$4.30, Four 30/100 Dollars.
E. E. LUCAS.

To Washington Mechanics Savings Bank,
Washington, D. C.”

And thereupon further to maintain the issues on their part joined, the plaintiffs produced as a witness DWIGHT M. WEEKS, who being first duly sworn, gave testimony on direct examination by counsel for plaintiffs, as follows: That he is the Financial Secretary of the defendant Council and has been since prior to August 5, 1916; That plaintiff E. E. Lucas called at his house on the evening of August 5, 1916 and left a message with Mrs. Weeks to the effect that he had called about his brother's dues and desired to be called by telephone. That witness did call Lucas by telephone and the conversation was substantially as testified to by Lucas. That witness has been Financial Secretary of the Council for upwards of 22 years. That John W. Lucas was a charter member of the Council; his name has been enrolled in the two funeral benefit associations ever since the existence of the Council, certainly more than 271 days. That it was the custom of the witness to receive dues at his residence after return-

ing from work and that he had received them from John W. Lucas in this manner but not often, as Lucas was Secretary of the Council and his dues were paid by the Council until his successor was elected and he never paid any more dues himself until after he became in arrears for dues; he never kept himself in good standing after that; previous to his death his dues were always accepted even after he was in arrears; no question was ever raised about that. That witness
23 called at the house of John W. Lucas' sister on the evening of Monday, August 7th, and either delivered the receipt for dues or else mailed it; at the time E. E. Lucas got the receipt, witness knew of the death of John W. Lucas.

And thereupon the witness was cross-examined by counsel for the defendant and gave testimony as follows: Witness knew John W. Lucas very well. That he was irregular in his payments and was frequently indebted to the Council for 13 weeks or more and paid them up from time to time. That at the time that the payment was made by E. E. Lucas, John W. Lucas owed \$4.30 dues. Under the action of the Council, repeatedly taken and which was attested by Mr. Lucas' signature to the minutes, the Council never paid either sick or funeral benefits to a man who was indebted for 13 weeks dues from the time of the first meeting night of the quarter; formal action was taken on several occasions, shown by the minutes of the Council, signed by Lucas, carrying out this construction of the By-Laws; the Council is and was connected with the Funeral Benefit Association of the United States, which is referred to in the Council's By-Laws; it was and is also connected with the Baltimore Funeral Benefit Association of the United States of America, which is the other association referred to in the By-Laws; the Council never at any time paid or agreed to pay funeral benefits to a member unless they were received from either one or both of those associations; that custom has existed since the witness has known the Order, or since 1891; a man could maintain his standing in the Council by paying up his arrears or indebtedness; He was always required to serve a probationary period after paying up his arrears or indebtedness for 8 weeks before he was entitled to sick benefits or, in the event of his death, to funeral benefits; the Council has never at any time paid
24 a funeral benefit to a man who owed 13 weeks dues to his Council; the Council has paid a large number of death benefits and in no case did a man owe 13 weeks dues; the Council always counted the period of 13 weeks from the first day of each quarter, January, April, July and October; if a man was indebted to the Council for \$2.50 counting from the first meeting night, he was not a beneficial member to receive either sick or funeral benefits; it was necessary for a man who had taken sick to serve a probationary period of eight weeks thereafter, paying in full after recovering from his sickness, if he was beneficial; under the construction which the Council has invariably placed upon these By-Laws, John W. Lucas was non-beneficial. Thereupon the witness was asked to state his recollection of the telephone conversation between himself and E. E. Lucas on the night of August 5th and answered as follows:

"As near as I can remember it, I told him he could pay his dues,—he was still alive and might get better—to pay his dues, but he would not be beneficial, but to pay up his dues 'and they will date from to-night and he will be that much sooner, if he recovers, entitled to benefits.' "

Cross-question: "Did you at that time or any time ever waive the enforcement of the By-Laws of your Council in reference to Brother Lucas?"

Mr. Bauman (for plaintiffs): "That is a question of law, if your honor please."

Mr. De Haven (for defendant): "I am asking him as to the fact."

The Witness: "I never have, because I had no authority to."

The Court: "He means expressly."

Continuing, the witness gave testimony as follows: That the Council never at any time, in the case of Lucas or any one else, waived the enforcement of these By-Laws. That the Council met on the first and third Tuesday of each month. That witness credits payments of weekly dues on his day book the day he receives them; they are reported to the Council as receipts of the evening every meeting night; every meeting night the witness reads a list of persons who have paid since the preceding meeting and they are entered in the ledger as of the meeting night; the ledger is so ruled. That
25 witness sent to John W. Lucas notice of arrears in the regular manner as provided by the By-Laws. The witness thereupon identified a copy of the notice that was sent to John W. Lucas on June 1st and the same was introduced in evidence, marked defendant's exhibit No. 2. It is in words and figures following:

"Safety First.—Always be sure your dues are paid up before the end of each quarter—March 31—June 30—September 30—December 31.

Office of Financial Secretary.

Independent Council No. 2, Jr. O. U. A. M.

Washington, D. C., June 1, 1916.

Brother J. W. Lucas,

Residence 921 K St. S. E.:

Pursuant to the requirements of the By-Laws, it becomes my duty to inform you that your indebtedness to this Council to date is as follows:

To balance due commencement of quarter Apr. 1.....	\$4.00
To Dues for Quarter ending June 30.....	3.10
To Fines.....	
To Assessments.....	
To Amount Due.....	7.10
To Cash paid during quarter.....	4.
Balance due to date of June 30.....	\$3.10

A member of this Council who is over thirteen weeks in arrears for dues, forfeits all rights and privileges, except that of being admitted into the Council Chamber during its session, and over six months in arrears is liable to suspension.

Any brother who is over thirteen weeks in arrears shall not be entitled to receive any sick or death benefits, nor will he be entitled to any benefits if he pays up after becoming sick during said illness.

Every member is cautioned to keep his address correct on the books of the Council.

Yours in V., L., and D.,

D. M. WEEKS,
Financial Secretary.

Residence ———.

Referred to ———."

And thereupon the witness, continuing, gave testimony as follows: It is customary to send such statements 30 days in advance to every member of the Council if he owes 10 cents. The Council never received from the Funeral Benefit Association money with which to pay death benefits of Lucas. And thereupon the cross-examination of the witness proceeded as follows:

Cross-question: "Do you know of your own knowledge, Mr. Weeks, as a member of the Council, and, if so, state, whether you knew that Brother Lucas knew the standard fixed by the Funeral Benefit Association requiring good standing of a member in the Council in order to receive funeral benefits?" Answer. I
26 have not any doubt in the world but that he knew it. He had been several times and represented the Funeral Benefit Association, sent from our Council and knew the laws.

X Q. Do you know what that standard was as to whether a man could or could not recover? A. I know; yes.

X Q. What is it? A. The law is that he must be in good standing in his own Council in order to recover from the Funeral Benefit Association.

X Q. Has the Association ever waived in any manner that standard as set forth in its By-Laws? A. Never to my knowledge.

Thereupon the witness, continuing, gave testimony as follows: That John W. Lucas was not a member of the By-Law Committee, but he was Secretary of the Council at the time the By-Laws were made and was conversant with all the proceedings; on page 25 of the By-Laws of the Council appears the name of J. William Lucas as Recording Secretary; the By-Laws were attested by him. And thereupon the following colloquy took place:

X Q. Have you the statement of the financial standing of Brother Lucas? A. I have.

X Q. Will you please produce it?

The Court: That is admitted.

Mr. De Haven (for defendant): It has not been set forth in detail. Have you a copy of that?

Mr. Bauman: The receipt showing where he had paid on April 23 for the quarter ending March 31?

Mr. De Haven: I want to show as to his standing——

The Court: It is admitted that he was constantly in arrears.

Mr. Brown (for plaintiffs): Constantly owed.

The Court: Constantly behind.

Mr. Bauman: He constantly paid up too, that is admitted.

The Witness: Do you want me to read the statement I have of his dues? I have the dues here in this book for 18 months.

The Court: It is admitted. I do not think we need go into that—that he did not pay on time.

The Witness: No sir.

Thereupon the witness was examined on redirect by counsel for the plaintiffs and gave testimony as follows: According to the notice sent Mr. Lucas on June 30, dues were payable July 1st; the weekly dues began on that date; one week after that, Lucas was considered to be in arrears one week; he had until September 30 to pay and would be entitled to sick benefits until that date; he would be 13 weeks in arrears on the morning after September 30, i. e., October 1st. That witness knew the intention of the committee that
27 drew the laws; it has always been that a member that owes 13 weeks is 13 weeks in arrears.

Thereupon the witness was recross-examined by counsel for the defendant and gave testimony as follows: That the contention of the witness is the contention of all members of the Council and has never been varied.

The plaintiffs thereupon announced their case closed.

Counsel for the defendant thereupon moved the court to instruct the jury to return a verdict for the defendant on the following grounds: That the evidence for the plaintiffs had failed to establish a *prima facie* cause of action for that: (1) The evidence shows that plaintiffs' decedent, John W. Lucas, was not in good standing in the defendant Council at the time of his death and, for that reason, under defendant's by-laws and the by-laws of the Funeral Benefit Association, plaintiffs cannot recover in this action. (2) Under the by-laws of the defendant Council, the dues are \$2.50 per quarter, consisting of 13 weeks, and the evidence shows that, at the time of the death of John W. Lucas he was indebted for a sum in excess of one quarter's dues. He was therefore not a beneficial member in the Council entitled to receive sick benefits for a period of eight weeks after all such dues were paid, and the check of E. E. Lucas, dated August 5, 1916, for \$4.30, which was sent in payment of the dues of John W. Lucas, amounted to an acknowledgment of the correctness of such indebtedness, whereby the said John W. Lucas was not beneficial until eight weeks after such payment, and, inasmuch as John W. Lucas died within said eight weeks, to wit, on or about August 6, 1916, he was not a beneficial member of defendant Council and the plaintiffs cannot recover. (3) The evidence shows that the defendant Council was connected with the Funeral Benefit Association of the United States and that that was one of the two funeral

benefit associations referred to in Section 1, Article 5 of the
28 By-Laws of said Council and that the decedent Lucas was
enrolled on the books of said Association as a member of the
Defendant Council, and that the By-Laws of said Association provide
a standard of qualification of what is "good standing" in order to
recover funeral benefits in the event of the member's death, to wit,
that said member was not at the date of his death serving a proba-
tionary period or penalty, which did deprive or would have de-
prived him of such benefits by the Council, and that the evidence
shows that the said deceased member was serving but had not com-
pleted the period of eight weeks probationary period, as required by
the laws of the Council. Wherefore the said Lucas was not in good
standing in his Council to receive benefits and the plaintiffs cannot
recover. (4) Before the plaintiffs can recover, it is mandatory upon
them to show that the deceased John W. Lucas complied with the
By-Laws of his Council, as it forms the basis of a contract of mem-
bership, and, inasmuch as Section 3 of Article 9 of the By-Laws of
the defendant Council provide that

"a member of this Council who is three months or over in arrears
in dues forfeits all his rights and privileges, except that he can be
admitted into the Council during its sessions. It shall be the duty
of the Councillor to see that this Section is strictly enforced."

and as the evidence shows that the said John W. Lucas was in arrears
for dues at the time of his decease, the deceased member was bound
by the above By-Laws and the plaintiffs cannot recover. (5) Section
4 of Article 10 of the by-Laws of the defendant Council provides:

"Any brother who is three months or over in arrears for weekly
dues and shall become sick or disabled, shall not be entitled to receive
any of said benefits during such sickness or disability, nor shall he
in case of death be entitled to funeral benefits, except as prescribed
by the laws of the funeral benefit associations at the time of his
death."

The evidence shows that the laws of the Funeral Benefit Association,
with which said Council was connected and upon whose books the de-
ceased member was enrolled, provided a standard or quali-
29 fication of good standing in the Council and that the said
John W. Lucas had not complied with that standard and
with which said Council was connected and upon whose books the de-
(6) Section 2, Article 8, "Penalties" of the By-Laws of the defendant
Council provide:

"A brother who is over 13 weeks in arrears for dues shall in case
of death receive only such benefits as may be allowed by the Funeral
Benefit Associations at the time of his death. He shall not be
entitled to any sick benefits for a period of eight weeks after paying
such arrears."

and the laws of the Funeral Benefit Association, with which the
defendant Council is connected, forbid the payment of funeral

benefits, unless the member of the Council was in good standing and such member was enrolled upon its books, and the evidence shows that at the time of the death of John W. Lucas he had not paid the quarterly dues, as provided for in the By-Laws, and that the check that was sent for the same had not been accepted by the Council, and that the said deceased member dies while owing more than one quarter's dues. Wherefore he was in arrears for 13 weeks' dues and under the laws of the Funeral Benefit Association of the United States, with which the Council was connected, the said Council was not entitled to recover the benefits from the said Association and the said John W. Lucas was not entitled to receive the benefits payable under the laws of said Council and the plaintiffs in this case cannot recover. (7) The evidence shows that it had been the custom of the defendant Council not to pay funeral benefits by reason of death of its members, unless such members were entitled at the time of their death to receive sick benefits and that that custom had been ratified and approved by the said John W. Lucas as a member of the said Council and by the Council itself and that this practice had been long continued, open and notorious and invariably followed, and such practice amounted to the legal standard of a custom and may

30 be considered as having been written in the By-Laws of the Council and the said John W. Lucas was bound thereby and the plaintiffs herein cannot recover. (8) The By-Laws of the defendant Council must be read in connection with the By-Laws of the Funeral Benefit Association of the United States, with which the said Council was connected and the standard fixed by those two By-Laws provided that a member could not receive funeral benefits if he were serving a probationary period at the time of his death. Wherefore the plaintiffs in this case cannot recover. (9) The construction which the members themselves have placed in good faith upon their By-Laws must be accepted by the court as the real and true construction and meaning, unless that construction is harsh, unreasonable and unfair. The reasonable construction of those By-Laws which relate to arrears of dues was understood and accepted by the members to be, that, when a member owed or was indebted for thirteen weeks' dues to his Council, calculated from the beginning of indebtedness, he was considered as being in arrears for such dues and not beneficial until after the expiration of eight weeks after such payment of such dues had been made to the Council and therefore the plaintiffs in this case cannot recover.

And the said motion was argued by counsel, and thereupon the court overruled the said motion, and an exception was reserved to the defendant at its request.

And thereupon the defendant rested.

No testimony was offered for the defendant and the foregoing is all of the evidence given in this cause at the said trial.

Thereupon the plaintiffs through their counsel moved the court to instruct the jury to render a verdict for the plaintiffs and the court granted said motion and an exception thereunto was reserved to the defendant at its request.

During the course of the trial, certain questions were asked the

31 witness Weeks, by the attorneys for the plaintiffs and for the defendant respectively, both in his direct, cross, and re-direct examinations, which questions were objected to at different times by the attorneys for the plaintiffs and the attorneys for the defendant, respectively, upon the grounds that the testimony sought to be educed by the questions was irrelevant, in that it was sought thereby to change the effect of the written instruments, namely, the by-laws and constitution which had been offered in evidence, or stipulated in writing that they should be offered subject to the right to object to them upon the grounds mentioned in said stipulation. Finally it was decided by the court, and assented to by the attorneys for both the plaintiffs and defendant, that this testimony would be taken subject to a motion to strike out; and certain of the testimony appearing in this bill of exceptions was taken subject to these objections; and in the subsequent decision of the court instructing a verdict for the plaintiffs, this (oral) testimony was not considered by the court and was treated as if it had been stricken out upon the grounds hereinbefore stated, and the decision of the court in instructing a verdict for the plaintiffs was based upon the written by-laws and constitutions themselves, together with other testimony in the case offered without objection.

Each and every of the exceptions in this bill of exceptions set forth was severally taken at the time of the ruling of the court as hereinbefore set forth and then and there noted on its minutes in each and every instance at the time of taking such exceptions and were severally allowed by the court and reference is hereby made to the same as though they were now severally and separately stated and at the request of counsel for the defendant this bill of exceptions, having been submitted to the court in duplicate on April 9, 1919, is signed and sealed and made part of the record in
32 this case, now for then.

Witness my hand and seal this 26th day of October, 1920.

WALTER I. McCOY,

Justice.

Approved:

CHAPIN BROWN,

CHAPIN B. BAUMAN,

Attorney- for Plaintiff.

GEO. W. DALZELL,

Attorney for Defendant.

33 [Endorsed:] Law No. 61075. Ernest E. Lucas et al. v. Independent Council, &c. Bill of exceptions.

Endorsed on cover: District of Columbia Supreme Court. No. 3473. Independent Council No. 2, Jr. Order of United American Mechanics of the District of Columbia, a corporation, appellant, vs. Ernest E. Lucas et al. Court of Appeals, District of Columbia. Filed Nov. 9, 1920. Henry W. Hodges, clerk.

